

900 KAR 6:130. Certificate of Need criteria for physician exemption.

RELATES TO: KRS 216B.010, 216B.015, 216B.020, 216B.040, 216B.095, 216B.990, 311.271

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040(2)(a)1

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the requirements for physician exemption criteria necessary for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Ambulatory surgical center" is defined by KRS 216B.015(4).

(2) "Entity" means any legally recognized business entity in which an individual or group may practice its profession including a professional limited liability company, professional service corporation, partnership, or sole proprietor.

(3) "Evaluation and Management codes" means those codes recognized by the American Medical Association as procedures involving evaluation of patients and management of patient care in the Current Procedural Terminology® references.

(4) "Office" or "clinic" means the physical location at which health care services are provided by a physician, dentist, advanced practice registered nurse, licensed clinical social worker, speech-language pathologist, occupational therapist, physical therapist, psychologist, or other practitioner of the healing arts.

(5) "Owner" means a person as defined by KRS 216B.015(22) who is applying for the Certificate of Need and will become the licensee of the proposed health service or facility.

(6) "Practice" means the individual, entity, or group that proposes to provide health care services and shall include the owners and operators of an office or clinic.

(7) "Practitioner of the healing arts" means a person licensed by the appropriate state agency to practice a healing art as defined by KRS 311.271(2)(a).

(8) "Primarily" means a simple majority or something that occurs at least fifty-one (51) percent of the time.

Section 2. Physician non-exemption due to operation of an ambulatory surgical center. An office or clinic that is operating an ambulatory surgical center pursuant to KRS 216B.095(7) shall not be exempt from the Certificate of Need requirements.

Section 3. Physician Exemption from Certificate of Need. (1)(a) An office or clinic that would otherwise be required to obtain a Certificate of Need shall be exempt from Certificate of Need pursuant to KRS 216B.020(2) if:

1. The practice claiming the exemption is 100 percent owned in an organizational form recognized by the Commonwealth as one (1) in which the listed professions can be practiced by the individual physician, dentist, advanced practice registered nurse, licensed clinical social worker, speech-language pathologist, occupational therapist, physical therapist, psychologist, or other practitioner of the healing arts or group of physicians, dentists, advanced practice registered nurses, licensed clinical social workers, speech-language pathologists, occupational therapists, physical therapists, psychologists, or other practitioners of the healing arts (hereinafter collectively referred to as "physician") claiming the exemption;

2. The practice claiming the exemption primarily provides physician services (e.g., evaluation and management codes) rather than services or equipment covered by the State Health Plan;

3. Services or equipment covered by the State Health Plan that are offered or provided at

the office or clinic shall be primarily provided to patients whose medical conditions are being treated or managed by the practice;

4. A physician or physicians licensed to practice and practicing in Kentucky within the practice and claiming the exemption have overall responsibility for directing and coordinating the care and management of services provided to patients;

5. Patients are treated on an outpatient basis and are not maintained overnight on the premises of the office or clinic;

6. Services or equipment covered by the State Health Plan that are offered or provided at the office or clinic are related to the professional services offered to patients of the practice claiming the exemption; and

7. Major medical equipment in excess of the limits set forth in 900 KAR 6:030 is not being utilized without a Certificate of Need or other statutory or regulatory exemption.

(b) This section shall not limit or prohibit the continued operation of an office or clinic that was established and in operation prior to January 31, 2006, and operating pursuant to and in accordance with the following:

1. Provisions of a Certificate of Need advisory opinion issued by the Office of Health Policy specifically with respect to that office or clinic;

2. Provisions of an Attorney General opinion issued specifically with respect to that office or clinic; or

3. An order issued with respect to that office or clinic by a court of competent jurisdiction in the Commonwealth of Kentucky.

(2) A practice owned entirely by a radiologist or group of radiologists shall demonstrate the following:

(a) Compliance with subsection (1)(a)1., 4., 5., and 6. of this section;

(b) The radiologists shall regularly perform physician services (e.g., test interpretations) at the location where the diagnostic tests are performed, including interpretations by or through teleradiology; and

(c) The billing patterns of the practice indicate that the practice is not primarily a testing facility and that it was organized to provide the professional services of radiology.

(3) A hospital-acquired private practice or an outpatient clinic under the same ownership and administrative and financial control as a Kentucky-licensed hospital shall demonstrate that:

(a) The practice or clinic does not:

1. Provide pain management services at an off-campus clinic in which the majority of patients of the practitioners at the facility are provided treatment for pain that includes the use of controlled substances;

2. Provide any services or equipment covered by the State Health Plan; or

3. Provide outpatient surgical services; and

(b) The physician or physicians and other practitioners of the healing arts providing care and treatment to patients of the office or clinic are:

1. Licensed to practice in Kentucky; and

2. Employed by the:

a. Hospital; or

b. Entity with ownership and control of both the hospital and office or clinic. (39 Ky.R. 365; 811; 985; eff. 11-9-2012; 44 Ky.R. 1413; eff. 3-15-2018.)